

Botched operation leaves legacy of pain - Patient says surgeon was at end of 'marathon day'

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Dan Jennings still can't understand how Palomar Medical Center surgeons left a piece of metal nearly the size of a lawn mower blade inside his stomach during a routine operation.

There's no question that they did.

By the time they discovered their mistake 17 days later, Jennings said, the 14-inch-long instrument had provoked a flesh-eating bacterial infection that dug a 6-inch-long hole in his abdomen, causing nearly a year of disability and pain.

Now, as he slowly recovers, he wishes he had asked more questions before he went under the knife last Sept. 14.

For example, just what did his surgeon, Dr. Fred Hammill, mean when he said, according to Jennings, "Thursday is my marathon day."?

"I wish I'd asked him how many patients he would operate on that day, and just how rested he would be when he got to me."

The 46-year-old Rancho Bernardo resident has endured two surgeries to repair the damage, and recuperation has been agonizingly slow. He says his life has been irrevocably changed.

"I can't work, can't fly and I can barely move," he said. "My whole quality of life has totally collapsed. I'm depressed. It's overwhelming. I want people to ask, 'What the hell happened to this guy and could it happen to me?' "

As he showed a visitor X-rays revealing what looks like a tongue depressor for an elephant stretching from his colon to his lung, he talked about the routine events that led to his surgical nightmare.

"Dr. Hammill told me during our pre-surgical consult that on Thursdays, he gets an early start around 7:30 a.m. and worked throughout the day straight through."

Jennings didn't realize it then, but his surgery to repair an abnormal channel from his bowel to his bladder wouldn't begin until after 9 p.m., and wouldn't end until after 1 a.m., said his attorney, Joe Maiorano.

Sometime early Sept. 15, Jennings was wheeled into the recovery room with a 14-inch-by-2-inch blade called a malleable retractor still inside his stomach, Maiorano said.

Jennings filed a Superior Court lawsuit in June against Palomar, Hammill and Dr. Paul Polishuk, the urologist who assisted with the surgery. The lawsuit asks for \$4 million for pain, suffering and lost wages.

Polishuk's attorney declined to discuss the case. Hammill's attorney, Nancy Vaughan, said her client "is a very experienced and well-respected surgeon in the North County. He has been told by Mr. Jennings that Mr. Jennings trusts him with his life and Mr. Jennings has insisted on staying with Dr Hammill for his medical care."

That was true, Jennings said, "because I wanted him to see every week what he had done to me." He said that he stopped seeing Hammill after he filed the lawsuit.

Palomar spokeswoman Tamara Hemmerly said both doctors continue to operate at the Escondido hospital.

Palomar attorney Marilyn Moriarty spoke for the hospital, though not the physicians. She said there is no disagreement that Jennings "needs to be compensated for the damage flowing from the retained instrument," but said that whether the instrument caused the infection is in dispute.

She said that, other than the physicians, the operating room team had started work late in the day. "They had come on duty that evening and had been given breaks," she said.

She declined to discuss the case further because the matter is in litigation.

Palomar filed a response to the lawsuit denying Jennings' allegations and blaming any damages on the "negligent failure" of Jennings or other parties "to exercise reasonable care for plaintiff's well-being and safety."

California health officials investigated and criticized the hospital for failing to count instruments before and after the procedure, but took no action against the doctors. Licensing officials have no power to fine Palomar or other hospitals.

Jennings, a bachelor, works for ResMed Inc. of Poway, which makes devices to help people sleep. His job routinely sent him to Latin America to teach doctors about treating sleep disorders.

Last summer, Jennings was diagnosed with diverticulitis, an inflammation of saclike pouches in the digestive tract. He was sent to urologist Polishuk, who suggested he see Hammill for surgery, according to Jennings' lawsuit.

Jennings' elective surgery was scheduled for 7 p.m. nine days later, the lawsuit said. Palomar's operating room protocol calls for elective surgeries to be scheduled no later than 5 p.m.

A day after the operation, Jennings said, he felt excruciating pain whenever he tried to turn or stay on his right side, adding it was especially painful near his right breast. The lawsuit said Hammill dismissed his complaint as "routine post-surgical pain" and told Jennings to stay on his back.

The pain continued. Jennings was discharged not to his home but to a hotel, because he was incapable of climbing the stairs to his apartment. He continued to complain.

On Oct. 1, Jennings' father drove him to the X-ray department at Palomar, where a technician asked him to lie down on the table while he shot the first image.

The lawsuit said that within five minutes after taking the image, the technician said "there was something underneath (Jennings) on the table." The technician had Jennings sit up while he looked on the table for a metal object. He then asked Jennings to lie back down and took a second picture.

The technician returned with the radiologist, who examined Jennings. "There seems to be a problem," the radiologist said, according to the lawsuit. He said he'd "never seen anything like this on an X-ray before."

Jennings was sent to urologist Polishuk's office and shown the X-rays. Polishuk "admitted that defendants must have left the retractor inside the plaintiff (Jennings) during the Sept. 14 surgery," the suit contends.

"Doesn't someone count these items before and after surgery?" Jennings' father, Jim, asked Polishuk, who replied, according to the suit:

"It's strange, but Palomar Hospital is one of the only hospitals where I perform surgeries that does not require an instrument count. They count sponges, gauze, needles, but not instruments."

The next night, Polishuk and Hammill operated on Jennings to remove the metal retractor.

Polishuk and Hammill told Jennings' father they'd found a severe infection in Jennings' stomach, requiring them to remove a lot of tissue, the suit said. Jennings said -- and photographs graphically show -- the hole was nearly 3 inches deep, 3 inches wide and stretched 6 inches up and down his stomach.

It required "an extensive and exhausting post-operative course of care and treatment," including plastic surgery, according to the suit.

"It's been horrible," Jennings said.

Maiorano and several local physicians say serious bacterial infections are a well-known result of a forgotten piece of metal inside a patient's body.

"The evidence is that bacterial infections occur more easily if there's a foreign body, such as a piece of metal," said Sharp orthopedic surgeon Dr. Richard Coutts.

Maiorano said that's what happened to Jennings, even though the hospital disagrees. Palomar declined to specify what might have caused the infection.

A state health department investigation of the Jennings case resulted in a brief deficiency statement saying that Palomar staff failed to count surgical instruments, a patient was not X-rayed after an operation and the physician did not file a timely discharge summary. The retractor was not mentioned.

"Palomar had a policy that instruments should be counted on all procedures, but that policy did not state who should be doing it," said Hitesvara Saravan, an administrator for the state Division of Licensing and Certification.

Palomar told the state it would correct the problem by establishing a specific instrument count procedure before and after all surgeries.

The state does not penalize hospitals for such incidents, nor did it recommend that Polishuk or Hammill be investigated by the state Medical Board, because the state decided it was the entire operating team that was responsible for making sure the instruments were counted, Saravan said.

Saravan said Jennings has the right to complain to the Medical Board himself.

As for Palomar, "I'm sure the facility, to the top, feels very badly that this has happened," Saravan said.

A Palomar spokeswoman declined to say whether there was an internal investigation into the incident.

Should there be standards on how long each day surgeons should operate?

The Medical Board of California and the California Healthcare Association, which represents hospitals, the Joint Commission on Accreditation of Healthcare Organizations, the American College of Surgeons and the California Medical Association have none.

But health advocates, including Dr. Sidney Wolfe, director of Public Citizen Health Research Group in Washington, D.C., say hospitals should limit operating hours.

Earlier this year, Wolfe's group asked the federal government to limit the number of hours worked by medical residents and fellows because of harm from sleep deprivation. Wolfe believes such rules should cover all doctors.

In recent months, word about Jennings' case has circulated to many surgeons' lounges. And several local doctors suggested the burden should fall on the hospital to set limits to guard against surgeon fatigue.

Several surgeons said their hospitals don't routinely allow elective surgeries to start after 5 p.m. or 7 p.m.

Sharp's Coutts, for example, acknowledged that operations can easily run longer than their

scheduled times, keeping doctors in surgery into the evening. "But I personally would not schedule an elective procedure to begin at 9 p.m.," he said.

Hospitals and doctors alike still smart from the explosive findings in the 1999 Institute of Medicine report, which documented the frequency of operating room and medication errors in hospitals.

Dr. A. Brent Eastman, trauma surgeon at Scripps Memorial in La Jolla, said concern about surgeon fatigue has prompted many surgeons to self-limit the amount of time they spend in the operating room.

So-called marathon days, he said, "are really a thing of the past," although some doctors may still practice that way.

Jennings isn't blaming only his doctors.

"There were eight people in the operating room that night who missed this," he said. "I want the hospital to be accountable. I want them to say they're sorry. And I want to prevent something like this from happening to anyone else."

- **Caption:** 2 PICS1,2. Dan Jennings is recovering after having a 14-inch-long instrument left in him during surgery, found in an X-ray weeks later.1. Dan Trevan / Union-Tribune 2. Nadia Borowski Scott / Union-Tribune
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